

**United States Department of Labor
Employees' Compensation Appeals Board**

K.T., Appellant

and

**U.S. POSTAL SERVICE, COLUMBIA
HEIGHTS POST OFFICE, Washington, DC,
Employer**

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**Docket No. 20-1500
Issued: August 6, 2021**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge

JANICE B. ASKIN, Judge

VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 4, 2020 appellant filed a timely appeal from a February 24, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP).¹ Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant received an overpayment of compensation in the amount of \$109,738.78 for the period May 16, 2014 through May 25, 2019 for which she was without fault because she concurrently received FECA wage-loss compensation and Social Security Administration (SSA) age-related retirement benefits, without an appropriate offset;

¹ The Board notes that on appeal and following the February 24, 2020 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

² 5 U.S.C. § 8101 *et seq.*

(2) whether OWCP properly denied waiver of recovery of the overpayment; and (3) whether it properly required recovery of the overpayment by deducting \$461.54 every 28 days from appellant's continuing compensation payments.

FACTUAL HISTORY

On April 11, 2014 appellant, then a 66-year-old customer service supervisor, filed a traumatic injury claim (Form CA-1) alleging that on March 31, 2014 she developed pain in her lower back radiating into her knees after bending down and lifting mail while in the performance of duty. She stopped work on March 31, 2014.³ Appellant noted on the claim form that her retirement coverage was under the Federal Employees Retirement System (FERS). OWCP accepted the claim for a lumbar strain and lumbar radiculopathy. It paid appellant wage-loss compensation on the supplemental rolls from May 16, 2014 through April 4, 2015 and on the periodic rolls commencing April 5, 2015.

On April 17, 2019 OWCP forwarded to SSA a FERS/SSA dual benefits calculations transmittal. On May 8, 2019 SSA completed the FERS/SSA dual benefit calculation worksheet setting forth appellant's SSA rate with FERS and without FERS from April 2014 through December 2018. The form indicated that, with FERS, appellant was entitled to a monthly payment of \$1,913.00, effective April 2014, \$1,945.00, effective December 2014, \$1,982.00, effective for both January and December 2015, \$1,992.00, effective January 2016, \$1,998.00, effective December 2016, \$2,038.00, effective December 2017, and \$2,095.00, effective December 2018. Without FERS, she was entitled to a monthly payment rate of \$183.00, effective April 2014, \$186.00, effective December 2014, January and December 2015, and January 2016; \$187.00, effective December 2016, \$191.00 effective December 2017, and \$196.00, effective December 2018.

OWCP completed a FERS offset calculation form on June 26, 2019 and computed a total overpayment of \$109,738.78. This form indicated: from May 16 through November 30, 2014, appellant received an overpayment of compensation in the amount of \$11,359.56, from December 1 through 31, 2014, she received an overpayment of compensation in the amount of \$1,797.66, from January 1 through November 30, 2015, she received an overpayment of compensation in the amount of \$19,775.74, from December 1 through 31, 2015, she received an overpayment of compensation in the amount of \$1,835.47, from January 1 through November 30, 2016, she received an overpayment of compensation in the amount of \$19,945.38, from December 1, 2016 through November 30, 2017, she received an overpayment of compensation in the amount of \$21,791.70, from December 1, 2017 through November 30, 2018, she received an overpayment of compensation in the amount of \$22,224.89, and from December 1, 2018 through May 25, 2019, she received an overpayment of compensation in the amount of \$11,018.37.

In a preliminary overpayment determination dated August 28, 2019, OWCP notified appellant that she had received an overpayment of compensation in the amount of \$109,738.78 because she concurrently received FECA compensation benefits and SSA age-related retirement benefits for the period May 16, 2014 through May 25, 2019 without an appropriate offset. It further advised her of its preliminary determination that she was at fault in creating the overpayment of compensation because she failed to provide information she knew or should have known was material. OWCP provided appellant with an overpayment action request form and an

³ Appellant retired from the employing establishment effective March 31, 2014.

overpayment recovery questionnaire (Form OWCP-20). Additionally, it notified her that, within 30 days of the date of the letter, she could request a telephone conference, a final decision based on the written evidence, or a prerecoupment hearing.

In a September 11, 2019 overpayment action request form, postmarked September 20, 2019, appellant requested a telephonic prerecoupment hearing before a representative of OWCP's Branch of Hearings and Review. She requested waiver of recovery of the overpayment noting she did not know there had been a mistake in her paperwork. In an accompanying Form OWCP-20, appellant indicated that her monthly income was \$3,500.00, which included FECA and SSA benefits. She also indicated that she had a total of \$15,047.38 in cash, checking, certificate deposits, and savings accounts. Appellant noted her monthly expenses as \$929.00 for rent, \$200.00 for food, \$300.00 for clothing, \$96.00 for utilities, and \$466.36.00 for other miscellaneous expenses. Other monthly installment payments totaled \$881.00.

A telephonic prerecoupment hearing was held on January 15, 2020. Appellant testified as to expenses and income, including a rental property in New York City, which provided \$500.00 in monthly income. She also related that she had approximately \$65,000.00 in assets in her checking and savings accounts.

By decision dated February 24, 2020, OWCP's hearing representative finalized the preliminary overpayment determination, finding that appellant had received a \$109,738.78 overpayment of compensation for the period May 16, 2014 through May 25, 2019 because she concurrently received wage-loss compensation and age-related SSA benefits without the appropriate offset. She found, however, that appellant was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment as her monthly income⁴ exceeded her monthly expenses⁵ by more than the allotted amount. The hearing representative required recovery of the overpayment by deduction of \$461.54 every 28 days from appellant's continuing compensation benefits.

LEGAL PRECEDENT -- ISSUE 1

Section 8102 of FECA provides that the United States shall pay compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.⁶ Section 8116 limits the right of an employee to receive compensation. While an employee is receiving compensation, he or she may not receive salary, pay, or remuneration of any type from the United States.⁷

Section 10.421(d) of the implementing regulations requires that OWCP reduce the amount of compensation by the amount of SSA age-related retirement benefits that are attributable to

⁴ OWCP's hearing representative found appellant had total monthly income of \$3,915.39 (\$1,377.39 in FECA benefits plus \$2,038.00 in SSA benefits plus and \$500.00 in rental income). She further found that appellant had assets in the amount of \$65,000.00 in checking/savings accounts.

⁵ She determined appellant had monthly expenses of \$3,191.19.

⁶ *Supra* note 2 at § 8102(a).

⁷ *Id.* at § 8116.

federal service of the employee.⁸ FECA Bulletin No. 97-09 provides that FECA benefits have to be adjusted for the FERS portion of SSA benefits because the portion of the SSA benefit earned as a federal employee is part of the FERS retirement package, and the receipt of FECA benefits and federal retirement concurrently is a prohibited dual benefit.⁹

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$109,738.78 for the period May 16, 2014 through May 25, 2019, for which she was without fault, because she concurrently received FECA wage-loss compensation benefits and SSA age-related retirement benefits, without an appropriate offset.

The evidence of record supports that appellant received FECA wage-loss compensation for total disability beginning on May 16, 2014, and that she received SSA age-related retirement benefits beginning April 2014. As noted, a claimant cannot receive concurrent FECA wage-loss compensation and SSA age-related retirement benefits attributable to federal service.¹⁰ The information provided by SSA established that appellant had received SSA age-related retirement benefits that were attributable to federal service at the same time as she received FECA benefits from May 16, 2014 through May 25, 2019. Thus, the record establishes that she received an overpayment of FECA wage-loss compensation.¹¹

To determine the amount of the overpayment, the portion of the SSA benefits that were attributable to federal service must be calculated. OWCP received documentation from SSA with respect to the specific amount of SSA age-related retirement benefits that were attributable to federal service. SSA provided the SSA rates with FERS, and without FERS for the period May 16, 2014 through May 25, 2019. OWCP provided its calculations for each relevant period based on the SSA worksheet.

The Board has reviewed OWCP's calculation of benefits received by appellant for the period May 16, 2014 through May 25, 2019 and finds that an overpayment of compensation in the amount of \$109,738.78 was created.¹²

LEGAL PRECEDENT -- ISSUE 2

Section 8129 of FECA provides that an overpayment in compensation shall be recovered by OWCP unless incorrect payment has been made to an individual who is without fault and when adjustment or recovery would defeat the purpose of FECA or would be against equity and good

⁸ 20 C.F.R. § 10.421(d); *see W.T.*, Docket No. 20-1218 (issued February 26, 2021); *L.W.*, Docket No. 19-0787 (issued October 23, 2019); *S.M.*, Docket No. 17-1802 (issued August 20, 2018).

⁹ FECA Bulletin No. 97-09 (issued February 3, 1997); *see also M.G.*, Docket No. 20-1145 (issued February 24, 2021); *N.B.*, Docket No. 18-0795 (issued January 4, 2019).

¹⁰ *Supra* note 8 at § 10.421(d); *see A.S.*, Docket No. 20-1314 (issued February 23, 2021); *S.O.*, Docket No. 18-0254 (issued August 2, 2018); *L.J.*, 59 ECAB 264 (2007); *see also N.B., id.*; *A.C.*, Docket No. 18-1550 (issued February 21, 2019).

¹¹ *Id.*

¹² *B.G.*, Docket No. 20-0541 (issued April 28, 2021).

conscience.¹³ Section 10.438 of OWCP's regulations provides that the individual who received the overpayment is responsible for providing information about income, expenses, and assets as specified by OWCP. This information is needed to determine whether or not recovery of an overpayment would defeat the purpose of FECA or be against equity and good conscience. Failure to submit the requested information within 30 days of the request shall result in denial of waiver.¹⁴

The guidelines for determining whether recovery of an overpayment would defeat the purpose of FECA or would be against equity and good conscience are set forth in sections 10.434 to 10.437 of OWCP's regulations.¹⁵ Section 10.436 provides that recovery of an overpayment would defeat the purpose of FECA if recovery would cause hardship because the beneficiary needs substantially all of his or her income (including compensation benefits) to meet current ordinary and necessary living expense, and, also, if the beneficiary's assets do not exceed a specified amount as determined by OWCP from data provided by the Bureau of Labor Statistics.¹⁶ For waiver of recovery of the overpayment under the defeat the purpose of FECA standard, appellant must show that he or she needs substantially all of his or her current income to meet current ordinary and necessary living expenses, and that assets do not exceed the resource base.¹⁷ An individual is deemed to need substantially all of his or her current income to meet current ordinary and necessary living expenses if monthly income does not exceed monthly expenses by more than \$50.00.¹⁸

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied waiver of recovery of the overpayment.

As OWCP found appellant without fault in the creation of the overpayment, waiver must be considered, and repayment is still required unless adjustment or recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience.¹⁹

Appellant has not established that recovery of the overpayment would defeat the purpose of FECA because she has not shown that she needs substantially all of her current income to meet ordinary and necessary living expenses.

The Board finds that the documentation of record supports that appellant had \$3,915.39 in monthly income and \$3,191.19 in monthly expenses, and thereby her monthly income exceeded

¹³ *Supra* note 2 at § 8129.

¹⁴ *Supra* note 9 at § 10.438.

¹⁵ *Id.* at §§ 10.434-10.437.

¹⁶ *Id.* at § 10.436. OWCP's procedures provide that a claimant is deemed to need substantially all of his or her current net income to meet current ordinary and necessary living expenses if monthly income does not exceed monthly expenses by more than \$50.00. Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Determinations*, Chapter 6.400.4a(3) (September 2018). OWCP's procedures further provide that assets must not exceed a resource base of \$6,200.00 for an individual or \$10,300.00 for an individual with a spouse or dependent, plus \$1,200.00 for each additional dependent. *Id.* at Chapter 6.400.4a(2).

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *See J.R.*, Docket No. 17-0181 (issued August 12, 2020); *L.S.*, 59 ECAB 350 (2008).

her monthly ordinary and necessary expenses by more than \$50.00.²⁰ OWCP properly arrived at these figures by reviewing the documentation and determining what claimed expenses were supported by the record.²¹ Because appellant has not met the first prong of the two-prong test of whether recovery of the overpayment would defeat the purpose of FECA, it is not necessary for OWCP to consider the second prong of the test, *i.e.*, whether her assets exceed the allowable resource base.

Appellant also has not established that recovery of the overpayment would be against equity and good conscience because she has not shown, for the reasons noted above, that she would experience severe financial hardship in attempting to repay the debt or that she relinquished a valuable right, or changed her position for the worse in reliance on the payment which created the overpayment.²²

Because appellant has failed to establish that recovery of the overpayment would defeat the purpose of FECA, or be against equity and good conscience, she has failed to show that OWCP abused its discretion by refusing to waive the recovery of the overpayment.

LEGAL PRECEDENT -- ISSUE 3

The Board's jurisdiction over recovery of an overpayment is limited to reviewing those cases where OWCP seeks recovery from continuing compensation under FECA.²³

Section 10.441 of OWCP's regulations provides that, when an overpayment of compensation has been made to an individual who is entitled to further payments, the individual shall refund to OWCP the amount of the overpayment as soon as the error is discovered or his or her attention is called to the same. If no refund is made, OWCP shall decrease later payments of compensation, taking into account the probable extent of future payments, the rate of compensation, the financial circumstances of the individual, and any other relevant factors so as to minimize hardship.²⁴

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly required recovery of the overpayment by deduction of \$461.54 from appellant's continuing compensation every 28 days.

The record supports that, in requiring repayment of the \$109,738.78 overpayment of compensation by deducting \$461.54 from appellant's compensation payments every 28 days, (\$500.00 a month) OWCP took into consideration the financial information submitted as well as the factors set forth in section 10.441 of its regulations. Therefore, OWCP properly required

²⁰ *Supra* note 17.

²¹ *See W.T., supra* note 9; *J.B.*, Docket No. 16-0796 (issued August 19, 2016).

²² *See W.T., supra* note 9; *J.B., supra* note *id.*; *William J. Murphy*, 41 ECAB 569 (1989).

²³ *Supra* note 9 at § 10.441; *see W.T., supra* note 9; *M.P.*, Docket No. 18-0902 (issued October 16, 2018).

²⁴ *Id.*

recovery of the overpayment by deducting \$461.54 from her compensation payments every 28 days.

CONCLUSION

The Board finds that appellant received an overpayment of compensation in the amount of \$109,738.78 for the period May 15, 2014 through May 25, 2019, for which she was not at fault, as she concurrently received FECA wage-loss compensation and SSA age-related retirement benefits and without an appropriate offset. The Board further finds that OWCP properly denied waiver of recovery of the overpayment, and properly required recovery of the overpayment by deducting \$461.54 from her continuing compensation payments every 28 days.

ORDER

IT IS HEREBY ORDERED THAT the February 24, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 6, 2021
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board